

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 ROBERT BLUE,
11 #1034439)
12 Plaintiff,) 3:11-cv-00010-ECR-VPC
13 vs.)
14 HOWARD SKOLNIK, *et al.*,)
15 Defendants.)
16 / **ORDER**

17 This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On February 17,
18 2011, the court dismissed certain claims and allowed several of plaintiff's First and Eighth Amendment
19 claims to proceed (docket #3). Before the court is plaintiff's motion for district judge to reconsider
20 Screening Order (docket #5).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), cert. denied 512 U.S. 1236 (1994).

1 Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order
 2 for the following reasons:

3 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
 4 discovered evidence which by due diligence could not have been
 5 discovered in time to move for a new trial under Rule 59(b); (3) fraud
 6 (whether heretofore denominated intrinsic or extrinsic),
 7 misrepresentation, or other misconduct of an adverse party; (4) the
 8 judgment is void; (5) the judgment has been satisfied, released, or
 9 discharged, or a prior judgment upon which it is based has been reversed
 10 or otherwise vacated, or it is no longer equitable that the judgment should
 11 have prospective application; or (6) any other reason justifying relief
 12 from the operation of the judgment.

13 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
 14 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
 15 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
 16 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
 17 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
 18 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later
 19 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should
 20 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
 21 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."
 22 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), quoting *McDowell v. Calderon*, 197 F.3d 1253,
 23 1255 (9th Cir. 1999).

24 In the Screening Order, the court analyzes several claims related to alleged denial of a
 25 kosher diet under the First Amendment (docket #3). In his motion, plaintiff argues that he also brought
 26 these claims pursuant to the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"),
 27 42 U.S.C. §§ 2000cc to 2000cc-5 (2000) (docket #5). Section 3 of RLUIPA provides that "[no] [state
 28 or local] government shall impose a substantial burden on the religious exercise of a person residing in
 29 or confined to an institution," unless the government shows that the burden furthers "a compelling

1 governmental interest" and does so by "the least restrictive means." 42 U.S.C. § 2000cc-1(a); *see also*
2 *Greene v. Solano County Jail*, 513 F.3d 982, 986 (9th Cir. 2008); *Alvarez v. Hill*, 518 F.3d 1152, 1156-57
3 (9th Cir. 2008).

4 Good cause appearing, plaintiff's motion for district judge to reconsider Screening Order
5 (docket #5) is granted in part. Accordingly, the court clarifies that all First Amendment claims that were
6 allowed to proceed pursuant to the court's Screening Order are also brought pursuant to RLUIPA.
7 Defendants shall respond to these claims on both bases.

8 The court has reviewed plaintiff's remaining arguments in his motion to reconsider and
9 finds them to be meritless. Plaintiff has failed to make an adequate showing under either Rule 60(b) or
10 59(e) that any other aspect of this court's Screening Order should be reversed.

11 **IT IS THEREFORE ORDERED** that plaintiff's motion for district judge to reconsider
12 Screening Order (docket #5) is **GRANTED IN PART**. All First Amendment claims that were allowed
13 to proceed pursuant to the court's Screening Order are also allowed to proceed pursuant to the Religious
14 Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc to 2000cc-5
15 (2000). The remainder of plaintiff's motion for district judge to reconsider Screening Order is
16 **DENIED**.

17 **IT IS FURTHER ORDERED** that defendants' motion for extension of time to file
18 responsive pleading (docket #11) is **GRANTED**. Defendant(s) shall file and serve an answer or other
19 response to the complaint within **thirty (30) days** of the date of entry of this Order.

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21 Dated this 3rd day of May, 2011.

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